

Burns, Marlene

PA2008-114

**From:** Alford, Patrick  
**Sent:** Monday, June 18, 2012 3:36 PM  
**To:** Burns, Marlene  
**Cc:** 'Marice White'  
**Subject:** FW: NBR DEIR Banning Ranch Open Space Acquisition  
**Attachments:** City Email NBR Purchase.pdf; NBR DEIR Open Space Alternative I.pdf; NBR DEIR Open Space Alternative II.pdf; NBR DEIR Open Space Alternative III.pdf; NBR DEIR Open Space Alternative IV.pdf; OCTA Board Action.pdf

[More NBR correspondence.](#)

**From:** Bruce Bartram [mailto:b.bartram@verizon.net]

**Sent:** Monday, June 18, 2012 3:28 PM

**To:** Alford, Patrick

**Cc:** knelson@web-conferencing-central.com; terrywelsh@hotmail.com; robb@hamiltonbiological.com; greenp1@cox.net; medjkraus@yahoo.com; shokobennett@gmail.com; blush1996@aol.com; davesutherland4@gmail.com; pcmalkemus@gmail.com; jtmansfield@ca.rr.com; mtabbert15@gmail.com; steve.banningranch@hotmail.com; mezzohiker@msn.com; dkoken@hmausa.com; terrywelsh@hotmail.com; jenniferfrutig@aol.com

**Subject:** NBR DEIR Banning Ranch Open Space Acquisition

June 18, 2012

October 14, 2011

Patrick J. Alford, Planning Manager  
 City of Newport Beach, Community Development Department  
 3300 Newport Boulevard  
 P.O. Box 1768  
 Newport Beach, CA 92658-8915

Re: NBR DEIR Banning Ranch Open Space Acquisition

Dear Mr. Alford:

The City of Newport Beach General Plan's Land Use policies regarding Banning Ranch are contained in Pgs. 3-67 - 3-77. On Pg. 3-71 the "Policy Overview" regarding Banning Ranch is stated:

**"The General Plan prioritizes the acquisition of Banning Ranch as an open space amenity for the community and region. Oil operations would be consolidated, wetlands restored, nature education and interpretative facilities provided, and an active park developed containing playfields and other facilities to serve residents of adjoining neighborhoods. Should the property not be fully acquired as open space, the Plan provides for the development of a concentrated mixed-use residential village that retains the majority of the property as open space. This would contain a mix of housing types clustered around a "village center" of local-serving commercial uses, small boutique hotel, active park, and possibly a school. Buildings would be located and designed and an interconnected street system provided to enhance pedestrian activity and reduce vehicular trips. Development would be concentrated to preserve the majority of the property as open space, while oil operations would be clustered and wetlands restored. An internal trail system would be developed to link uses within its neighborhoods and districts and provide access to adjoining neighborhoods. While the Plan indicates the maximum intensity of development that would be allowed on the property, this will ultimately be determined through permitting processes that are required to satisfy state and federal environmental regulatory requirements." (Emphasis added)**

The Policy Overview indicates the "use" of Banning Ranch as a "residential village" is a "secondary alternative" available only upon Banning Ranch's acquisition as open space proving a failure. This "open space" priority is also shown in the Introduction to the General Plan. On Pg. 1-2., it is stated that the General Plan Advisory Committee...developed this General Plan to ensure that the City achieves the (Vision Statement) by, among many other things, doing the following:

.....  
 "Supporting efforts to acquire Banning Ranch for permanent open space."

At any rate, the General Plan lists the following Land Use Goals, Policies and Strategies regarding the prioritizing the acquisition of Banning Ranch as open space:

## **"Goal**

### **LU 6.3**

**Preferably a protected open space amenity, with restored wetlands and habitat areas, as well as active community parklands to serve adjoining neighborhoods.**

## **Policies**

### **LAND USES (designated as "OS(RV)")**

#### **LU 6.3.1**

##### **Primary Use**

**Open space, including significant active community parklands that serve adjoining residential neighborhoods if the site is acquired through public funding.**

#### **LU 6.3.2**

##### **STRATEGY**

##### **Acquisition for Open Space**

**Support active pursuit of the acquisition of Banning Ranch as permanent open space, which may be accomplished through the issuance of state bonds, environmental mitigation fees, private fund raising, developer dedication, and similar techniques.**

## **Goal**

### **LU 6.4**

**If acquisition for open space is not successful, a high-quality residential community with supporting uses that provides revenue to restore and protect wetlands and important habitats.**

## **Policies**

### **LAND USES**

#### **LU 6.4.1 Alternative Use**

**If not acquired for open space within a time period and pursuant to terms agreed to by the City and property owner, the site may be developed as a residential village, containing a mix of housing types, limited supporting retail, visitor accommodations, school, and active community parklands, with a majority of the property preserved as open space. The property owner may pursue entitlement and permits for a residential village during the time allowed for acquisition as open space."**

To pin down what is meant by "within a time period" above, I emailed Gregg Ramirez of the City to whom which the City's website directs General Plan questions be directed to. His response is attached in which he indicates that "[T]here is no defined timeline. However, the City Council will receive a report on funding feasibility for acquisition by a non-profit group at the August 11 (2009) City Council session. We will send you a copy of that report." I never got the report, however, the foregoing shows there is no fixed time limitation for the City to successfully acquire Banning Ranch as open space.

In the NBR DEIR, the priority use of Banning Ranch as open space and the City's "efforts" at its acquisition are addressed in NBR DEIR Section 7.0 Alternatives to the Proposed Project. The Open Space acquisition is listed as Alternative B. The NBR DEIR points a supposedly bleak picture regarding potential funding for acquisition after mentioning that a pricing study in January 2009 listed a price range from \$138 mil to \$158 mil. As to funding availability, on Pg 7-64 it is stated:

"To date, funds for the acquisition of the site have not been available and a viable funding program has not been identified. The Renewed Measure M (also known as Measure M2) was passed in November 2006, to extend the half-cent sales tax for transportation projects from April 2011 through 2041. A component of Measure M2 was the allocation of funds for environmental mitigation. The Newport Banning Ranch property was one of the initial 14 properties that were recommended by the OCTA Environmental Oversight Committee (EOC) to be considered for

acquisition as part of the Environmental Mitigation Program (EMP) developed for the Measure M2. Acquisition properties identified for the EMP were ranked according to their biological values and those with higher habitat values and willing sellers were subject to appraisals and further negotiations. At the time, indicated it would not provide a letter indicating intent to sell because the property was in the entitlement process and a Draft Environmental Impact Report was expected to be issued in 2010 (Ward 2010). Newport Banning Ranch, LLC indicated that, given the circumstances pertaining to the Newport Banning Ranch property-including the very high City and Owner land valuations--the admission to the OCTA Vision 2020 Committee by the EOC that their intention was not to use "highest and best use" as the standard for appraisal/valuation, as well as concerns related to oil operations cleanup liabilities, a "willing seller" letter could not be provided."

Despite the foregoing, the NBR DEIR states that Alternative B "is considered to be potentially feasible."

From policies contained in General Plan it is apparent that the City's "efforts" at acquiring Banning Ranch must be shown to have been unsuccessful before NBR's development as a "residential village" is permitted." If the City approves NBR without making any findings that acquisition of Banning Ranch was not successful, this would be grounds for legal attack against the approval for violating the General Plan.

Also, in the NBR DEIR on Pg. 7-64 is the statement that "funds for the acquisition of the site (Banning Ranch) have not been available and a viable funding program has not been identified." Yet, as shown above there then follows a discussion of Measure M2 Funds as a possible source of acquisition funds. The discussion concludes, however, by stating that Newport Banning Ranch, LLC would not provide a "willing seller letter" to the OCTA Environmental Oversight Committee to help determine Banning Ranch's acquisition eligibility through Measure M2 Funds.

It is submitted that the City prior to approval of NBR's development as a "residential village" require Newport Banning Ranch, LLC to submit a "willing seller letter" to the OCTA Environmental Oversight Committee. This to be consistent with General Plan policies outlined above which mandate the City in "Supporting efforts to acquire Banning Ranch for permanent open space."

To gain a better understanding of the Measure M2 environmental mitigation program attached is a copy the Orange County Transportation Authority Board Actions Summary for the Meeting of May 14, 2012. As you can see, at this meeting alone some \$5 million was allocated as part of the "Measure M2 Environmental Mitigation Program." In the summary, the "Measure M2 Environmental Mitigation Program" is described as follows:

"The M2 Environmental Freeway Program Mitigation fund is a comprehensive plan to preserve and restore open space open space throughout the county. It will provide approximately \$300 million during the next 30 years to preserve and restore open space throughout Orange County." (Emphasis added)

In conclusion, M2 Environmental Freeway Program Mitigation funds are an obvious source for the acquisition of Banning Ranch as open space. The General Plan prioritizing the acquisition of Banning Ranch as open space. Therefore, City is bound under the General Plan to make a good faith attempt regarding acquisition of Banning Ranch as open space prior to approval of its "development" as a "residential village."

Bruce Bartram  
2 Seaside Circle  
Newport Beach, CA 92663

**Bruce Bartram**

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**From:** "Ramirez, Gregg" <GRamirez@newportbeachca.gov>  
**Date:** Wednesday, August 05, 2009 10:18 AM  
**To:** "Bruce Bartram" <b.bartram@verizon.net>  
**Subject:** RE: General Plan Question re: Banning Ranch  
 Mr. Bartram,

There is no defined timeline. However, the City Council will receive a report on funding feasibility for acquisition by a non-profit group at the August 11 City Council study session. We will send you a copy of that report.

Sincerely,

**Gregg Ramirez**  
**City of Newport Beach**  
**Planning Department**  
**949-644-3219**

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**From:** Bruce Bartram [mailto:b.bartram@verizon.net]  
**Sent:** Monday, August 03, 2009 3:37 PM  
**To:** Ramirez, Gregg  
**Subject:** General Plan Question re: Banning Ranch

Dear Mr. Ramirez:

As regards acquisition of the Banning Ranch for open space, the General Plan on page 3-72, LU 6.4.1 states:

"Alternative Use

If not acquired for open space within a time period and pursuant to terms agreed to by the City and property owners, the site may be developed as a residential village, containing a mix of housing types, limited supporting retail, visitor accommodations, school, and active community parklands, with a majority of the property preserved as open space. The property owners may pursue entitlements and permits for residential village during the time allowed for acquisition as open space."

What and/or how much is the "time period" and "time allowed for acquisition" of Banning Ranch by the City for open space? No mention of a specific time frame/limitation is mentioned in the General Plan.

Thank you for your expected cooperation in this matter.

Very truly yours,

Bruce Bartram  
 2 Seaside Circle  
 Newport Beach, Ca 92663

----- Original Message -----  
**From:** Ramirez, Gregg

## **Utilities**

The Utilities evaluated in the EIR include the following: water, wastewater facilities, and energy (electricity and natural gas). The General Plan Open Space Designation Alternative would not cause increases in the resident population of the City. However, because this Alternative would create an active park containing playfields and other facilities to serve residents of adjoining neighborhoods, wastewater and water services would be required with the provision of restrooms, irrigation, and potable water. Therefore, there would be minimal impacts associated with Thresholds 4.15-2 (water supply), 4.15-4 (exceeding wastewater treatment requirements), and 4.15-5 (wastewater treatment capacity). Lighting associated with the park would also require electricity (Threshold 4.15-7). Wastewater, water, and electricity service demands would be considered less than significant and would be less than with the proposed Project. Alternative B would not require new facilities (other than distribution lines) related to water, wastewater, or energy facilities and would not exceed the existing capacity of these services. Impacts associated with Thresholds 4.15-1 (construction of new water treatment facilities) and 4.15-7 (construction of new energy transmission facilities), which both pertain to physical impacts associated with construction of water and energy facilities or accelerated physical deterioration associated with increased usage of existing facilities, would be less than significant. Though the impacts would not be significant for the proposed Project, the impacts would be less with Alternative B because the overall demand generated would be less, which would reduce the demand on existing facilities.

Thresholds 4.15-3 (water), 4.15-6 (wastewater), and 4.15-8 (energy) pertain to consistency with any applicable plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. The General Plan identifies the Open Space Designation as the primary use for the Project site. Therefore, this Alternative would be consistent with land use and natural resource policies; these are outlined in Table 4.15-11, City of Newport Beach General Plan Consistency Evaluation, which identifies the use of sustainable development practices, water conservation, and use of water-conservation devices in the City. Both the proposed Project and Alternative B would be consistent with the applicable General Plan policies.

## **Conclusion**

Alternative B would have fewer impacts than the proposed Project because it would involve less grading and site disturbance. This Alternative would have less demand on public services and utilities. However, this Alternative would not assist the City in meeting its RHNA housing requirements or implementing the General Plan Housing Element.

## ***Significant and Unavoidable Impacts***

Alternative B would be able to avoid the significant and unavoidable impacts associated with traffic, air quality, greenhouse gases, and certain noise impacts, when compared to the proposed Project. The following topics would have impacts that could not be reduced to a less than significant level:

- There would be land use incompatibility with respect to night illumination associated with the Community Park and long-term noise impacts on those Newport Crest residences immediately contiguous to the Project site. In addition, there would be a potential long-range noise impacts for residents on 17<sup>th</sup> Street west of Monrovia Avenue. For noise, though mitigation is proposed, noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased

interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the street with rubberized asphalt (Threshold 4.1-1).

- Alternative B would introduce nighttime lighting into a currently unlit area. The Community Park is anticipated to have night lighting of active sports fields, which could result in light spillover onto adjacent properties. The night lighting impacts are considered significant and unavoidable. The City of Newport Beach General Plan Final EIR found that the introduction of new sources of lighting associated with development of the site would be considered significant and unavoidable. In certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations, which notes that there are specific economic, social, and other public benefits that outweigh the significant and unavoidable impacts associated with the General Plan project (Threshold 4.2-3).
- Construction of the roadways and park would cause a substantial temporary increase in noise levels at residences and schools within 500 feet of the roadway and park construction because of existing relatively low ambient noise levels. Due to the low existing ambient noise levels, the proximity of the noise-sensitive receptors, and duration of construction activities, the temporary noise increases would be significant and unavoidable (Threshold 4.12-2).

### ***Feasibility and Ability to Meet Project Objectives***

This Alternative is deemed to be potentially feasible. That said, the ultimate determination of feasibility is a consideration for the decision makers. In this case, the financial feasibility of this Alternative is dependent upon the ability of a responsible party to obtain sufficient funds to acquire the site and fund clean-up, restoration, and long-term maintenance of the site. Feasibility is also dependent on the City's ability to construct roadways, infrastructure, and recreation improvements. In addition, since no mechanism exists to impose consolidation and clean-up of the oilfield, agreements would have to be negotiated for this to occur.<sup>5</sup>

The City and others have been investigating potential funding sources; however, to date no financing has been identified to implement any component of this Alternative despite efforts by the City to establish a value for the property, efforts to identify sources of funding via open space acquisition consultants, and the efforts of independent groups.

The General Plan identifies the fiscal constraints associated with implementation of this Alternative. The acquisition of the property and implementation of Alternative B, which includes site remediation, would be very expensive. The City has had a pricing study of the Project site prepared by an appraiser, which concluded in January 2009 that the price of the land could range from \$138,000,000 to \$158,000,000, assuming a 25 percent discount if all of the property were to be acquired at once (Buss-Shelger Associates 2008). These prices do not include the cost of clean-up and remediation from the oil operations on the property. The City also retained an open space acquisition consultant, who explored the feasibility of funding for acquisition of the property as open space. The consultant's report in August 2009 found that, in light of economic and State fiscal conditions, there is little likelihood of funding from State bonds or private foundations in the near future. In addition, some agencies felt that the important habitat areas on Newport Banning Ranch should be preserved through the development entitlement process, and public funding should not be used for acquisition of the entire property (Resources Opportunity Group, LLC. 2009). The City's open space acquisition consultant re-contacted State

<sup>5</sup> Acquisition of the property does not include acquisition of the underlying mineral rights, which are owned by a third party.

funding agencies in July 2010, after some Proposition 84 funds had been released. While some of those funds were technically “available” and agency staff had been told they may consider projects again, the practical reality was that any money available was only for projects that have been on line for two to three years, with appraisals and purchase negotiations completed. As in 2009, the conclusion was that there would not be enough money for an acquisition like Newport Banning Ranch for open space purposes (Wood 2009).

To date, funds for the acquisition of the site have not been available and a viable funding program has not been identified. The Renewed Measure M (also known as Measure M2) was passed in November 2006, to extend the half-cent sales tax for transportation projects from April 2011 through 2041. A component of Measure M2 was the allocation of funds for environmental mitigation. The Newport Banning Ranch property was one of the initial 14 properties that were recommended by the OCTA Environmental Oversight Committee (EOC) to be considered for acquisition as part of the Environmental Mitigation Program (EMP) developed for the Measure M2. Acquisition properties identified for the EMP were ranked according to their biological values and those with higher habitat values and willing sellers were subject to appraisals and further negotiations. At the time, Newport Banning Ranch, LLC indicated it would not provide a letter indicating intent to sell because the property was in the entitlement process and a Draft Environmental Impact Report was expected to be issued in 2010 (Ward 2010). Newport Banning Ranch, LLC indicated that, given the circumstances pertaining to the Newport Banning Ranch property—including the very high City and Owner land valuations—the admission to the OCTA Vision 2020 Committee by the EOC that their intention was not to use “highest and best use” as the standard for appraisal/valuation, as well as concerns related to oil operations clean-up liabilities, a “willing seller” letter could not be provided.

While EIRs are to focus on environmental impacts, rather than economic considerations, the financial feasibility of implementing an Alternative is a reasonable consideration under CEQA. If the resources are not available, the decision makers may be determined that this is not a feasible Alternative regardless of the potential environmental or other public benefits.

Additionally, this Alternative does not meet the Project objectives as effectively as the proposed Project. Specifically, this Alternative would not meet the following Project objectives:

- Development of a residential village of up to 1,375 residential units, offering a variety of housing types in a range of housing prices, including provision of affordable housing to help meet the City’s Regional Housing Needs Assessment (RHNA) (Objective 3).
- Development of up to 75 overnight accommodations in a small resort inn including ancillary facilities and services such as a spa, meeting rooms, shops, bars, and restaurants that would be open to the public (Objective 4).
- Development of up to 75,000 square feet of retail commercial uses oriented to serve the needs of local residents and visitors utilizing the resort inn and the coastal recreational opportunities provided as part of the Project (Objective 5).
- Development of a land use plan that (1) provides a comprehensive design for the community that creates cohesive neighborhoods promoting a sense of identity with a simple and understandable pattern of streets, a system of pedestrian walkways and bikeways that connect residential neighborhoods, commercial uses, parks, open space and resort uses; (2) reduces overall vehicle miles travelled; (3) integrates landscaping that is compatible with the surrounding open space/habitat areas and that enhances the pedestrian experience within residential areas; and (4) applies architectural design

criteria to orient residential buildings to the streets and walkways in a manner that enhances the streetscape scene (Objective 6).

- Implement a Water Quality Management Program within the Project site that will utilize existing natural treatment systems and that will improve the quality of urban runoff from off-site and on-site sources prior to discharging into the Santa Ana River and the Semeniuk Slough (Objective 14).

In addition, the following objectives would only be partially met with Alternative B, assuming that adequate funding is available:

- Provide enhanced public access in the Coastal Zone through a system of pedestrian walkways, multi-use trails, and on-street bikeways designed to encourage walking and biking as an alternative to the use of automobiles by providing connectivity among residential, commercial, park, open space, and resort uses within the Project site and to existing adjacent open space, hiking and biking trails, the beach, and the Pacific Ocean (Objective 8).
- Provide for the restoration and permanent preservation of habitat areas through implementation of a Habitat Restoration Plan (HRP) for the habitat conservation, restoration, and mitigation areas ("Habitat Areas") as depicted on the Master Development Plan (Objective 10).
- Provide for long-term preservation and management of the Habitat Areas through the establishment of a conservation easement or deed restriction and the creation of an endowment or other funding program (Objective 11).
- Improve the existing arroyo drainage courses located within the Project site to provide for higher quality habitat conditions than exist prior to the time of Project implementation (Objective 13).
- Implement fire protection management solutions designed to protect development areas from fire hazards, to preserve sensitive habitat areas, and to create fire-resistant habitat restoration areas within currently denuded, invasive-species laden, and/or otherwise degraded areas (Objective 15).

Though this Alternative would not meet or would not effectively meet more than half the Project objectives, the General Plan identifies that the open space land use is the primary land use for the site with the residential village serving as an alternate, if acquisition for open space is not feasible. Therefore, Alternative B is considered to be potentially feasible.





## Meeting of May 14, 2012

### M2 Funding Headed To Environmental Restoration Projects

The Board approved six restoration projects today totaling approximately \$5 million as part of the Measure M2 Environmental Mitigation Program.

Project / City	Amount Funded	Acres
Aliso Creek / Laguna Niguel	\$1.1 million	55
Chino Hills State Park / Brea	\$193,000	21
Harriett Weider Regional Park / Huntington Beach	\$475,000	10
Lower Silverado Canyon / Irvine	\$1.4 million	44
North Coal Canyon / Yorba Linda	\$247,500	5.5
West Loma / Irvine	\$1.3 million	80

The restoration projects chosen are those determined to have the highest potential to support native plants, restore habitat for sensitive species and provide the highest potential to successfully replace resources lost to freeway construction.

The call for projects was issued June 2011 and OCTA received 40 proposals from throughout the county. The next step is to

issue another call for projects with the remaining program funding of \$400,000. The focus of the next round of projects will be on restoring watersheds affected by M2 freeway projects, specifically the Bolsa Chica Channel-Frontal Huntington Harbor, lower Santa Ana River, San Diego Creek and San Juan Creek.

The M2 Environmental Freeway Mitigation Program is a comprehensive plan to preserve and restore open space throughout the county. It will provide approximately \$300 million during the next 30 years to preserve and restore land throughout Orange County.

For more information regarding OCTA's environmental program, visit [www.octa.net/environmental](http://www.octa.net/environmental).

### Board Suspends Decision On Removing 19<sup>th</sup> Street Bridge from MPAH

The board voted to suspend its previous decision to remove the 19<sup>th</sup> Street bridge from the Master Plan of Arterial Highways (MPAH). The board asked that OCTA staff work with Newport Beach, Costa Mesa and Huntington Beach to identify potential impacts of removing the bridge from the master plan, find alternative options and generate an agreement that identifies those improvements with affected agencies. The board will revisit the issue no later than November 26.

The board has also decided to deny an appeal from a third party to have the California Environmental Quality Act (CEQA) determine if the 19<sup>th</sup> Street bridge

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removal is an environmentally viable option. The board maintains the bridge is exempt from CEQA because the MPAH is solely a planning and feasibility study, requiring only consideration of environmental factors.

In a one-time exception because of unique circumstances, the board voted to remove the 19<sup>th</sup> Street bridge from the Master Plan of Arterial Highways on March 12. The bridge was in the plan as a four-lane primary arterial.

The cities of Costa Mesa and Huntington Beach requested the removal of the bridge, which faced a number of challenges to being constructed including environmental impacts, community opposition, right-of-way impacts, challenging permitting processes and substantial costs.

The board supported the removal of the 19<sup>th</sup> Street bridge because of the unlikely possibility it would ever be constructed. The board has begun working with affected agencies to develop alternatives and generate an agreement to the bridge's outcome.

### **Army Advisory Council Recognizes OCTA as Veteran Friendly Employer**

The Southern California Army Advisory Council recognized the Orange County Transportation Authority on Monday as a military-friendly employer for its active involvement in military recruitment.

OCTA employs 124 veterans and honors those employees at an annual Veterans Day event. In addition, the agency reaches out to the military through:

- Participating in veteran recruitment events at least once a year at Camp Pendleton in San Diego
- Speaking at the Camp Pendleton Transition Assistance Program and providing career transition advice to members of the Army, Navy and Marine Corps
- Remaining engaged with local junior colleges and universities to assist veterans making the transition from the military into the academic environment
- Coordinating efforts with the U.S. Army Southern California Recruiting Battalion to assist Guard, Reserve and active duty soldiers as they make a transition from the military service to career fields in the transportation industry